

Decision 09-11-017 November 20, 2009

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Jerome D. Monkarsh,

Complainant,

vs.

Southern California Gas Company (U904G),

Defendant.

Case 09-05-011  
(Filed May 12, 2009)

**DECISION DISMISSING COMPLAINT FOR  
FAILURE TO STATE A CAUSE OF ACTION**

Jerome D. Monkarsh, (Complainant) alleges that Southern California Gas Company, (Defendant) has, for at least the last five years, abused and manipulated its tier billing system (the baseline quantity of gas) so as to overcharge its customers for gas. Complainant alleges that he should have been billed monthly based upon an average billing cycle of 30/31 days. He alleges that in the course of at least the past five years, he has been intentionally and unfairly charged excessive sums for gas by virtue of Defendant's billing for a greater number of billing days (34/35) during the colder and, therefore, greater consuming winter months of December, January, and February. This practice has forced the increased consumption into a higher tier, thus benefitting Defendant who has obtained a higher rate than it might have, had it billed for fewer days during these three cold months.

Complainant alleges that Defendant has failed to explain why the five bills he has received over the course of the last five years for 34 and 35-day billing cycles have only occurred during December, January, and February and never once during any other (warmer and less consuming) months.

Complainant requests that Defendant cease its predatory billing practices and utilize a more uniform number of billing days each month, for each billing period, where no more than 91 days are billed for the three months of December, January, and February; that no more than 153 days are billed for the cold months of November, December, January, February, March, and where no billing period during these five months shall exceed 32 days. Complainant also requests a refund of \$130 plus trial expenses, plus a refund to all of Defendant's customers in the amount of \$20,000,000 for five years of manipulative overcharges.

Southern California Gas Company (SoCalGas) answered and moved to dismiss. It argues that Complainant's claims are without merit because Complainant has failed to provide evidence that SoCalGas' monthly billing cycle is in violation of any provision of law or any order or rule of this Commission. It asserts that its monthly billing cycle is consistent with its tariff and Commission rules.

Public Utilities Code Section 739 requires the Commission to designate a baseline quantity of gas necessary for a significant portion of the reasonable gas needs of the average residential customer. The objective is to encourage conservation of scarce resources while providing a basic amount of gas for residential use at a fair price. In establishing the baseline quantities, the Commission is required to take into account climatic and seasonal variations in consumption and the availability of gas service. (Section 739(a)(1).) SoCalGas' tier system of baseline and non-baseline usage rate schedules used to bill

residential customers takes into account the variations in consumption of gas during the winter period, November 1 through April 30, and the summer period, May 1 through October 31. (Schedule No. GR, Residential Service.)

SoCalGas asserts that the Complainant's monthly-bill components are not based on rate schedules utilizing monthly fixed charges and monthly fixed baseline allocation amounts and charges. Rather, they are based on rate schedules utilizing per day charges and daily allocation amounts charges.

SoCalGas Tariff Rule No. 1 defines "Billing Cycle" as the regular periodic interval for reading customers' meters for billing purposes. Usually meters are scheduled to be read monthly. SoCalGas Tariff Rule No. 14, D provides that bills utilizing daily allowance billing for gas service rendered for a period less than 27 days or more than 33 days will be computed in accordance with the applicable rate schedule.

Section 1702 of the California Public Utilities Code requires that the complaint "[set] forth any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission." The Complainant has failed to show that SoCalGas has not at all times complied with the Public Utilities Code and with SoCalGas rules and tariffs approved by the Commission.

We dismissed a complaint for failing to state a cause of action where the complainant protested the reasonableness of commission approved rates but did not allege that the utility had violated its tariffs, commission regulations, or state law. We said complaint proceedings are appropriate for addressing tariff violations, wrongful billings, or an improper assignment of a customer to a particular schedule, but are not appropriate forums for discussing rate design,

rate restructuring, or the integrity of an already approved rate. (Universal Forest Products, Inc. v. Southern California Edison Company, 56 CPUC2d 731 (1994).)

Similarly, we dismissed a residential ratepayer's complaint which sought to have nearby overhead power and cable lines either reduced in number or undergrounded in order to mitigate obstructed views, where the complainant failed to state a cause of action upon which relief could be granted, since the local utility companies had not violated any franchise authority, law, tariffs, or Commission rules or regulations. (Keller v. Pacific Gas and Electric Company, 44 CPUC2d 1 (1992).)

Complainant has failed to state a claim upon which relief can be granted because SoCalGas has, at all times, acted in accordance with its tariffs and with Commission rules and decisions with respect to its customer billing practices.

### **Categorization and Need for Hearing**

The Commission preliminarily categorized this case as adjudicatory, and preliminarily determined that hearings were not necessary. It is not necessary to disturb the preliminary determinations.

### **Comments on Proposed Decision**

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed by complainant and reply comments were filed by defendant. Complainant has merely restated his original complaint that defendant has utilized improper billing periods to inflate complainant's gas charges. As discussed above, defendant's billing practices are in conformity with its tariff; complainant has failed to state a cause of action.

**Assignment of Proceeding**

Dian M. Grueneich is the assigned Commissioner and Robert Barnett is the assigned ALJ in this proceeding.

**Finding of Fact**

Complainant has not alleged that defendant has violated its tariffs, or any provision of law, or any Commission order or rule.

**Conclusion of Law**

The complaint should be dismissed for failure to state a cause of action.

**O R D E R**

**IT IS ORDERED** that:

1. The complaint is dismissed for failure to state a cause of action.
2. Case 09-05-011 is closed.

This order is effective today.

Dated November 20, 2009, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
TIMOTHY ALAN SIMON  
Commissioners